IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 12228 of 2007(E)

PETITIONERS:

1. N.P.PRAKASAN, S/O.K.K.PUSHKARAN,
AGED 49 YEARS, SELECTION GRADE ASSISTANT,
ADVOCATE GENERAL'S OFFICE, ERNAKULAM.

2. T.G.RAMESH, SELECTION GRADE ASSISTANT,
ADVOCATE GENERAL'S OFFICE, ERNAKULAM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF
LAW, SECRETARIAT, TRIVANDRUM.

2. THE ADVOCATE GENERAL OF KERALA,
ERNAKULAM.

3. THE SECRETARY TO ADVOCATE GENERAL,
ADVOCATE GENERAL'S OFFICE, ERNAKULAM.

4. SMT.PATHUMMA.K.M., OFFICE
SUPERINTENDENT (NOW ASSISTANT TRAINER),OFFICE
OF THE ADVOCATE GENERAL, ERNAKULAM.

5. SMT.G.VALSALA,
SELECTION GRADE CONFIDENTIAL ASSISTANT,
(NOW ASSISTANT TRAINER), OFFICE OF THE
ADVOCATE GENERAL, ERNAKULAM.

BY ADV. SRI.P.K.VIJAYAMOHANAN FOR R5
SPL.GOVERNMENT PLEADER & LIAISON OFFICER
SRI.K.K.RAVINDRANATH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) No. 12288 of 2007-E

Dated this the 12th day of June, 2007.

J U D G M E N T

The petitioners are Selection Grade Assistants working under the second respondent. They are included in Ext.P1 DPC list of officers eligible for promotion to the post of Section Officers. Respondents 4 and 5 are Office Superintendent and Selection Grade Confidential Assistant respectively. The 4th respondent is claiming promotion under the Typist quota and the 5th respondent under the quota for Confidential Assistants, to the post of Section Officer. The vacancies in that post have to be filled up in the ratio of 15:1:1 between Assistants, Typists and Confidential Assistants. According to the petitioners, respondents 4 and 5, though graduates, they have to clear the suitability test held by the PSC for getting promotion. In support of this submission reliance is placed on the Note under Rule 3 of Ext.P2 Special Rules. Initially this was the view maintained by the competent authority, as evident from Ext.P4. Now, the said stand has been changed and Ext.P6 has been issued stating that Typists and Confidential Assistants need not pass the suitability test, provided they are graduates. So, the petitioners challenge Ext.P6 and also the

consequential proceedings, Ext.P8, by which respondents 4 and 5 were deputed for training as Assistants for a period of one year so that they can be posted as Section Officers. This writ petition is filed by the petitioners, seeking the following reliefs:

> *i). call for the records relating to Exhibits P-6 and P-8 quash the originals of the same by the issue of a writ of certiorari or other appropriate writ or order.*
>
> *ii). issue a writ of mandamus or other appropriate writ order or direction commanding the Ist, 2nd and 3rd respondents to promote the petitioners as Section Officers from Exhibit P-1 as against the vacancies on 1-4-2007 and 1-5-2007.*
>
> *iii). issue a writ of mandamus or other appropriate writ order or direction commanding the Ist, 2nd and 3rd respondents to refrain from promoting the 4th and 5th respondents as Section Officers in preference to the petitioners.*

2. The 5th respondent has filed a counter affidavit stating that for graduates, suitability test is not necessary and they are fully qualified for being considered for appointment.

3. Heard the learned counsel on both sides. The contention of the petitioners that graduates among Typists/Confidential Assistants should also clear the eligibility test held by the PSC is plainly untenable, in view of the Note under Rule 3 of Ext.P2. A proper construction of the said Rule would show that graduates among them

need not clear the eligibility test. So, the challenge against Ext.P6 is repelled. The fact that the competent authority has earlier taken a stand in Ext.P4 that they should also clear the test will not bind anyone. In the result, the challenge against the consequential proceedings, Ext.P8 is also repelled.

4. The petitioners are entitled to be considered for promotion in accordance with the rank in Ext.P1, in the light of Ext.P2 Special Rules. So, the second respondent is directed to consider their claim for promotion as Section Officers. But, this will not affect the rights of respondents 4 and 5 or those coming under the Typists/Confidential Assistants, to claim promotion for the quota set apart for the. If they are eligible hands, their claim shall also be considered for appointment, according to their turn as per the ratio 15:1:1, prescribed in Ext.P2. The direction to consider the claim of the petitioners for promotion shall be complied with and orders passed, within one month from the date of production of a copy of this judgment.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS